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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,933	07/17/2002	Christoph Haluschka	10191/2301	4719
26646	7590	09/09/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			PATEL, VINOD D	
			ART UNIT	PAPER NUMBER
			3742	

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/088,933

Applicant(s)

HALUSCHKA ET AL.

Examiner

Vinod D. Patel

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED OFFICE ACTION

INTRODUCTION

1. This application/control number 10/088,933 has been examined. This is second action on the merits of the claimed invention. The application has claims 14-26 pending.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 14-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15-31 of copending Application No. 10/070113. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the instant application 10/088933 are merely broader in scope than the claims of 10/070113. The scope is broadened only by the omission of the requirement that the first electrode and second electrodes not be connected to the first and second lead layers as required by 10/070113. The narrower claim anticipates the broad claim.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 14-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sato (EP0834652 A1).

Sato discloses a sheathed-element glow plug provided with ionic-current sensor comprising a housing (4), a rod-shaped heating element (6) arranged in a concentric bore hole of the housing, the heating element including at least one insulating layer (8) made of an electrical insulating ceramic material, a first feeder layer (7) and a second feeder layer (7) and a bar (14) are made of the electro conductive ceramic material, the bar (14) is located at the end of the heating element (6), the first feeder layer (7) and the second feeder layer (7) are connected by the web (14), a first electrode (7) and a second electrode (14) for detecting the ionic current, the first electrode (7) embedded in the insulating layer (8) and the second electrode(14) applied on the at least on insulating layer (e.g. as shown in the Figures 2, 14), the first and second feeder layers (9a, 9b) are made of tungsten, the first electrode (7) and the second electrode (14) and insulating layer (8) are made of electro conductive ceramic powder mixture of molybdenum silicide and non conductive ceramic powder silicon nitride, it also teaches use of metal such as platinum for electrodes.

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7. Applicant's arguments filed ON 6-26-04 have been fully considered but they are not persuasive. Only disagreement by applicant regarding the rejection of claims 14-26 was the first and second feeder layers (9a, 9b) are made of electrically conducting material.

Erroneously, Examiner asserted that the first feed layer (9a) and the second feed layer (9b) are made of an electrically conducting ceramic material instead of the first feeder layer (7) and the second feeder layer (7) are made of an electrically conducting ceramic material as shown in the figures and explained above.

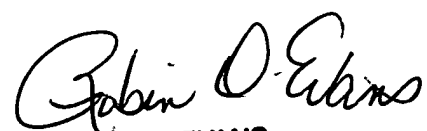
8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VP



Vinod Patel
Patent Examiner
Art Unit 3742



ROBIN O. EVANS
PRIMARY EXAMINER
9/7/04